

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:

see form PCT/ISA/220

PCT

WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY (PCT Rule 43bis.1)

| | | |
|--|--|---|
| | | Date of mailing (day/month/year) see form PCT/ISA/210 (second sheet) |
| Applicant's or agent's file reference see form PCT/ISA/220 | | FOR FURTHER ACTION See paragraph 2 below |
| International application No. PCT/GB2004/004839 | International filing date (day/month/year) 17.11.2004 | Priority date (day/month/year) 17.11.2003 |
| International Patent Classification (IPC) or both national classification and IPC C12N15/869, A61K35/76, C12N7/01 | | |
| Applicant CRUSADE LABORATORIES LIMITED | | |

1. This opinion contains indications relating to the following items:

- Box No. I Basis of the opinion
- Box No. II Priority
- Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- Box No. IV Lack of unity of invention
- Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- Box No. VI Certain documents cited
- Box No. VII Certain defects in the international application
- Box No. VIII Certain observations on the international application

2. **FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will usually be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA"). However, this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of three months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA:



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WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

IAP20 Rec'd 016 MAY 10 16 MAY 2006

Box No. I Basis of the opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.
 This opinion has been established on the basis of a translation from the original language into the following language , which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
 - a. type of material:
 a sequence listing
 table(s) related to the sequence listing
 - b. format of material:
 in written format
 in computer readable form
 - c. time of filing/furnishing:
 contained in the international application as filed.
 filed together with the international application in computer readable form.
 furnished subsequently to this Authority for the purposes of search.
3. In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/GB2004/004839

Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non obvious), or to be industrially applicable have not been examined in respect of:

- the entire international application,
 claims Nos. 86 (IA)

because:

- the said international application, or the said claims Nos. 86 (IA) relate to the following subject matter which does not require an international preliminary examination (*specify*):

see separate sheet

- the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):
 the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.
 no international search report has been established for the whole application or for said claims Nos.
 the nucleotide and/or amino acid sequence listing does not comply with the standard provided for in Annex C of the Administrative Instructions in that:

the written form

- has not been furnished
 does not comply with the standard

the computer readable form

- has not been furnished
 does not comply with the standard

- the tables related to the nucleotide and/or amino acid sequence listing, if in computer readable form only, do not comply with the technical requirements provided for in Annex C-bis of the Administrative Instructions.

- See separate sheet for further details

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/GB2004/004839

**Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or
industrial applicability; citations and explanations supporting such statement**

1. Statement

| | | |
|-------------------------------|-------------|--------------|
| Novelty (N) | Yes: Claims | 1-108 |
| | No: Claims | |
| Inventive step (IS) | Yes: Claims | 1-108 |
| | No: Claims | |
| Industrial applicability (IA) | Yes: Claims | 1-85, 87-108 |
| | No: Claims | |

2. Citations and explanations

see separate sheet

Box No. VIII Certain observations on the international application

The following observations on the clarity of the claims, description, and drawings or on the question whether the claims are fully supported by the description, are made:

see separate sheet

10/579607

AP2000-Sub 10-13 MAY 2006

International application No.

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING
AUTHORITY (SEPARATE SHEET)**

PCT/GB2004/004839

Re Item III.

Claim 86 relates to subject-matter considered by this Authority to be covered by the provisions of Rule 67.1(iv) PCT. Consequently, no opinion will be formulated with respect to the industrial applicability of the subject-matter of these claims (Article 34(4)(a)(I) PCT).

For the assessment of the present claims 86 on the question whether they are industrially applicable, no unified criteria exist in the PCT Contracting States. The patentability can also be dependent upon the formulation of the claims. The EPO, for example, does not recognize as industrially applicable the subject-matter of claims to the use of a compound in medical treatment, but may allow, however, claims to a known compound for first use in medical treatment and the use of such a compound for the manufacture of a medicament for a new medical treatment.

Re Item V.

1 Reference is made to the following documents:

- D1: LIU B L ET AL: "ICP34.5 deleted herpes simplex virus with enhanced oncolytic, immune stimulating, and anti-tumour properties." GENE THERAPY, vol. 10, no. 4, February 2003 (2003-02), pages 292-303, XP002313120 ISSN: 0969-7128

D2: VARGHESE SUSAN ET AL: "Oncolytic herpes simplex virus vectors for cancer virotherapy." CANCER GENE THERAPY, vol. 9, no. 12, December 2002 (2002-12), pages 967-978, XP002313119 ISSN: 0929-1903

D3: KRISKY D M ET AL: "Rapid method for construction of recombinant HSV gene transfer vectors" GENE THERAPY, MACMILLAN PRESS LTD., BASINGSTOKE, GB, vol. 10, no. 4, October 1997 (1997-10), pages 1120-1125, XP002079298 ISSN: 0969-7128

D1 discloses an IPC34.5 deleted HSV with enhanced oncolytic activity. In addition to ICP34.5 also ICP47 was deleted. Virus construction is described on p. 301.

D2 is a review about oncolytic herpes simplex virus vectors.

D3 discloses a method for constructing HSV gene transfer vectors by first inserting a reporter gene cassette (*lacZ*) into a portion of the target HSV gene (e.g. ICP22, ICP47 or UL41). In a second step the reporter gene is substituted with other foreign DNA by homologous recombination with a transgene expression plasmid.

2. Novelty and inventive step (Art 33(2) and (3) PCT):

Since none of the cited documents discloses or renders obvious a nucleic acid vector or a herpes simplex virus comprising all features of independent Claims 1, 2, 4 5, 48, 49, 52, 53, 89 and 97 novelty and inventive step of the claimed subject-matter is acknowledged.

Re item VIII

Claims 1, 2, 4 and 5 and Claims 48, 49, 52 and 53 are formulated as independent claims; however, said claims appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought and/or in respect of the terminology used for the features of that subject-matter. The aforementioned claims therefore lack conciseness and as such do not meet the requirements of Article 6 PCT.